

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
VONAGE HOLDINGS CORPORATION,

Plaintiff,

-against-

THE NEW YORK STATE PUBLIC SERVICE  
COMMISSION, and WILLIAM M. FLYNN,  
LEONARD A. WEISS, THOMAS J. DUNLEAVY,  
and NEAL N. GALVIN in their official capacities  
as the Commissioners of the New York State  
Public Service Commission and not as individuals,

Defendants.  
-----X

04 Civ. No. \_\_\_\_\_

**STATEMENT OF PLAINTIFF  
VONAGE HOLDINGS CORP.  
PURSUANT TO RULE 7.1,  
FEDERAL RULES OF CIVIL  
PROCEDURE**

Now comes Plaintiff Vonage Holdings Corp. ("Vonage"), through undersigned counsel,  
and states that it has no parent corporation and that no publicly held company owns 10% or more  
of Vonage's stock.

Respectfully submitted,  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

By: \_\_\_\_\_

Ky E. Kirby

William B. Wilhelm

Michael C. Sloan

Yun G. Lee (YL 5067)

The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
(212) 973-0111

*Counsel for Vonage Holdings Corporation*

Dated: June 7, 2004  
New York, New York

## CIVIL COVER SHEET

JS 44C/SDNY  
REV. 1/97  
WEB 12/02

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS Vonage Holdings Corporation DEFENDANTS New York State Public Service Commission ("PSC") and William M. Flynn, Leonard A. Weiss, Thomas J. Dunleavy, and Neil N. Galvin (in their official capacities at the PSC)

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Swidler Berlin Shereff Friedman, LLP, The Chrysler Bldg. 405 Lexington Avenue, NY, NY 10174 (212) 973-0111  
ATTORNEYS (IF KNOWN) Ky E. Kirby, William B. Wilhelm, Michael C. Sloan and Yun Lee

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
47 U.S.C. Sec. 1331. Vonage seeks preliminary and permanent injunctive relief barring enforcement of an order of the New York PSC that purports to impose telephone regulatory requirements on Vonage despite federal preemption.

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously Assigned

If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 362 PERSONAL INJURY -	<input type="checkbox"/> 610 AGRICULTURE	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 400 STATE				
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT	<input type="checkbox"/> MED MALPRACTICE	<input type="checkbox"/> 620 FOOD & DRUG	<input type="checkbox"/> 28 USC 158	<input type="checkbox"/> REAPPORTIONMENT				
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 365 PERSONAL INJURY	<input type="checkbox"/> 625 DRUG RELATED	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> 410 ANTITRUST				
<input type="checkbox"/> 140 NEGOTIABLE	<input type="checkbox"/> 320 ASSAULT, LIBEL &	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> SEIZURE OF	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 430 BANKS & BANKING				
<input type="checkbox"/> INSTRUMENT	<input type="checkbox"/> SLANDER	<input type="checkbox"/> 368 ASBESTOS PERSONAL	<input type="checkbox"/> 21 USC 881		<input type="checkbox"/> 450 COMMERCE/CC				
<input type="checkbox"/> 150 RECOVERY OF	<input type="checkbox"/> 330 FEDERAL	<input type="checkbox"/> INJURY PRODUCT	<input type="checkbox"/> 630 LIQUOR LAWS	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> RATES/ETC				
<input type="checkbox"/> OVERPAYMENT &	<input type="checkbox"/> EMPLOYERS'	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 640 RR & TRUCK	<input type="checkbox"/> 820 COPYRIGHTS	<input type="checkbox"/> 460 DEPORTATION				
<input type="checkbox"/> ENFORCEMENT OF	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> 650 AIRLINE REGS	<input type="checkbox"/> 830 PATENT	<input type="checkbox"/> 470 RACKETEER INFLU-				
<input type="checkbox"/> JUDGMENT	<input type="checkbox"/> 340 MARINE	<input type="checkbox"/> 370 OTHER FRAUD	<input type="checkbox"/> 660 OCCUPATIONAL	<input type="checkbox"/> 840 TRADEMARK	<input type="checkbox"/> ENCED & CORRUPT				
<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 345 MARINE PRODUCT	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> 690 OTHER		<input type="checkbox"/> ORGANIZATION ACT				
<input type="checkbox"/> 152 RECOVERY OF	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 380 OTHER PERSONAL		<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> (RICO)				
<input type="checkbox"/> DEFAULTED	<input type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> PROPERTY DAMAGE	<input type="checkbox"/> LABOR	<input type="checkbox"/> 861 MIA (1395FF)	<input type="checkbox"/> 810 SELECTIVE SERVICE				
<input type="checkbox"/> STUDENT LOANS	<input type="checkbox"/> 355 MOTOR VEHICLE	<input type="checkbox"/> 385 PROPERTY DAMAGE	<input type="checkbox"/> 710 FAIR LABOR	<input type="checkbox"/> 862 BLACK LUNG (923)	<input type="checkbox"/> 850 SECURITIES/				
<input type="checkbox"/> (EXCL VETERANS)	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> STANDARDS ACT	<input type="checkbox"/> 863 DIWC (405(g))	<input type="checkbox"/> COMMODITIES/				
<input type="checkbox"/> 153 RECOVERY OF	<input type="checkbox"/> 360 OTHER PERSONAL		<input type="checkbox"/> 720 LABOR/MGMT	<input type="checkbox"/> 864 DIWW (405(g))	<input type="checkbox"/> EXCHANGE				
<input type="checkbox"/> OVERPAYMENT OF	<input type="checkbox"/> INJURY		<input type="checkbox"/> RELATIONS	<input type="checkbox"/> 864 SSID TITLE XVI	<input type="checkbox"/> 875 CUSTOMER				
<input type="checkbox"/> VETERANS BENEFITS			<input type="checkbox"/> 730 LABOR/MGMT	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> CHALLENGE				
<input type="checkbox"/> 160 STOCKHOLDERS			<input type="checkbox"/> REPORTING &		<input type="checkbox"/> 12 USC 3410				
<input type="checkbox"/> SUITS			<input type="checkbox"/> DISCLOSURE ACT	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> 891 AGRICULTURE ACTS				
<input type="checkbox"/> 190 OTHER CONTRACT			<input type="checkbox"/> 740 RAILWAY LABOR ACT	<input type="checkbox"/> 870 TAXES	<input type="checkbox"/> 892 ECONOMIC				
<input type="checkbox"/> 195 CONTRACT PRODUCT			<input type="checkbox"/> 790 OTHER LABOR	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 893 ENVIRONMENTAL				
<input type="checkbox"/> LIABILITY			<input type="checkbox"/> 791 EMPL RET INC	<input type="checkbox"/> 20 USC 7609	<input type="checkbox"/> MATTERS				
			<input type="checkbox"/> SECURITY ACT		<input type="checkbox"/> 894 ENERGY				
					<input type="checkbox"/> ALLOCATION ACT				
					<input type="checkbox"/> 895 FREEDOM OF				
					<input type="checkbox"/> INFORMATION ACT				
					<input type="checkbox"/> 900 APPEAL OF FEE				
					<input type="checkbox"/> DETERMINATION				
					<input type="checkbox"/> UNDER EQUAL ACCESS				
					<input type="checkbox"/> TO JUSTICE				
					<input type="checkbox"/> 950 CONSTITUTIONALITY				
					<input type="checkbox"/> OF STATE STATUTES				
					<input checked="" type="checkbox"/> 890 OTHER STATUTORY				
					<input type="checkbox"/> ACTIONS				

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN X IN ONE BOX ONLY)

## ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN X IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1322, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [ ] [ ]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] [ ]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] [ ]
CITIZEN OF ANOTHER STATE	[ ] [ ]	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] [ ]	FOREIGN NATION	[ ] [ ]

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES) (Calendar Rule 4(A))

2147 Route 27  
Edison, New Jersey 08817  
Middlesex County

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES) (Calendar Rule 4(A))

Three Empire State Plaza  
Albany, New York 12223-1350  
Albany County  
(PSC & individual defendants)

One Penn Plaza  
New York, New York 10119  
New York County  
(PSC & individual defendants)

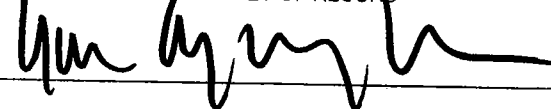
## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE  
(DO NOT check either box if this a PRISONER PETITION.)

DATE  
June 7, 2004

SIGNATURE OF ATTORNEY OF RECORD



ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO  
☒ YES (DATE ADMITTED Mo. 05 Yr. 1995)  
 Attorney Bar Code # YL 5067

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J. Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)